IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 413 of 2001

DATE OF DECISION: November 27, 2006.

Rajesh Aggarwal and another

.....Petitioners.

Vs.

State of Haryana

.....Respondent

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PRESENT: Mr. R.S.Cheema, Sr.Advocate assisted by
Ms. Tanu Bedi, Advocate for the petitioners.

Mr.S.S.Yadav, AAG, Haryana for the respondent.

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JUDGMENT

M.M.Aggarwal, J.

This is a petition against order dated 15.11.2000 of Additional Sessions Judge, Gurgaon, whereby accused-petitioners and some others had been charge-sheeted for offence under Section 302/34 IPC.

The FIR in this case had been registered on information of one Dalip Kumar, an employee of M/s Kee Pharma (P) Limited. Rakesh is stated to be owner and others are in the management of the concern. Various drugs such as, Norfloxacion, Ibuprofen and paracetamol were being manufactured therein. As per information, at about 10.45 AM on 27.6.1996, 45 workers were

working in the factory. Then a blast took place. All the workers ran here and there for safety. Smoke had spread in the entire factory. There was stampede. Some of the workers managed to come out from outer main gate, while seven employees ran towards back exit gate. That gate stood lying locked. These seven employees could not come out. They entered in the nearby latrine room and later died due to suffocation. Death of the seven employees had taken place due to fault on the part of the management for getting that back gate locked and for not keeping the electric system in order.

Police had registered FIR for offence under Section 304-A IPC. During investigation, scientific Team had visited the premises. Chemical test had been conducted. As per opinion of the Scientific Team, explosion took place due to failure of the thermostat control coupled with the sparking at its terminals and ignition of gases produced from drug formulations at higher temperature in the dryer. It was found that there must be volatile organic, highly inflammable vapours in the atmosphere of the room due to the manufacturing of the drugs. These would have been there due to improper/defective ventilation.

Police after investigation, presented challan for offence under Section 304 Part II IPC. However, when the matter was taken up by Additional Sessions Judge for consideration of charge, he had found that factory was being run without approval, that there was no approved factory plan. No NOC from the Fire officer was obtained and since sufficient precautions were not taken, there had been explosion. The case fell within clause fourthly of Section 300 IPC and, as such, there was case for offence under Section 302/34 IPC.

On behalf of the petitioners, it was argued that at the most it was a

case of negligence and the offence under Section 304-A IPC. It was pointed out that factory was running since 1994 whereas the occurrence took place in the year 1996. It was argued that out of 45 people, only 7 died and that also due to the fact that they had entered the latrine and died due to suffocation for which petitioners could not be said to be at fault. A judgment of the Hon'ble Supreme Court reported as **Keshub Mahindra Vs. State of M.P (1996) 6 Supreme Court Cases 129** which is in Union Carbide case and Hon'ble Supreme Court had held that for offence under Section 304 Part-II IPC, the accused must have done an act which caused death of a person with the knowledge that by such act he was likely to cause death.

Clause Fourthly of Section 300 IPC provides as under:

> "If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

In this case, the factory was running since 1994 and occurrence took lace in the year 1996. Admittedly seven persons had died but they had died due to suffocation since they confined themselves in the latrine room and could not come out. It cannot be said that the owner of the factory or the petitioners knew that their act of running the factory was so imminently dangerous that it must, in all probability, would cause death. It can also not be said that accused had knowledge that their act of running the factory would

cause death.

Under these circumstances there was no case for offence under Section 302 IPC or 304 Part II IPC. The petition is accepted to the extent that let accused be charge-sheeted for offence under Section 304-A IPC for causing death by their negligent act of not taking sufficient precautions.

(M.M.Aggarwal)

November 27 , 2006 **Judge**

raghav